

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
SOUTHERN DIVISION

ASD SPECIALTY HEALTHCARE, INC. d/b/a)
ONCOLOGY SUPPLY COMPANY,)

Plaintiff,)

v.)

ONCOLOGY HEMATOLOGY CENTERS OF)
ATLANTA, P.C. and LLOYD G. GEDDES,)

Defendants.)

CIVIL ACTION NO. 1:05-CV-591-
MEF-SRW

**APPLICATION TO CLERK OF COURT FOR ENTRY OF DEFAULT AGAINST
DEFENDANT ONCOLOGY HEMATOLOGY CENTERS OF ATLANTA, P.C.**

COMES NOW plaintiff, ASD Specialty Healthcare, Inc., d/b/a Oncology Supply Company (hereafter "Plaintiff" or "ASD"), by and through its counsel, and pursuant to Federal Rule of Civil Procedure 55, files this Application for Entry of Default against Defendant Oncology Hematology Centers of Atlanta, P.C. (hereafter "Defendant" or "OHCA"). In support of this Application, Plaintiff shows the following:

1. On June 22, 2005, Plaintiff filed its Complaint in this action against defendants Lloyd G. Geddes and OHCA. (See Ex. A, Affidavit of Heath A. Fite ¶ 3, and Ex. 1 attached thereto.)

2. On July 18, 2005, OHCA filed an Answer to the Complaint, but the Answer was filed by a principle of OHCA rather than an attorney.

3. On August 10, 2005, the Court entered an Order recognizing that a corporation cannot appear pro se, but must be represented by counsel. (See Ex. B, Order.) The Court ordered OHCA to secure representation and have its attorney file a Notice of Appearance by

September 23, 2005. The Court further ordered that failure to do so will allow Plaintiff to seek default judgment.

4. No attorney has filed a Notice of Appearance on behalf of OHCA to date.

5. Accordingly, entry of default against OHCA is appropriate under the Court's Order.

6. In the interest of caution and fairness, Plaintiff assured proper service on OHCA by again serving it with a Summons and Complaint.

7. On October 6, 2005, service of the Summons and Complaint was made on OHCA through its agent authorized by appointment to receive service of process. (See Ex. A ¶ 4, and Ex. 2, attached thereto.)

8. Federal Rule of Civil Procedure 12 provides that a defendant must respond to a complaint within twenty (20) days from service of the complaint on the defendant. The Summons served on OHCA also informed OHCA that it had twenty (20) days to respond to the Complaint served therewith. (See Ex. A, at attached Exhibit 2.)

9. Since the Complaint was served on OHCA on October 6, 2005, OHCA was required to serve a response by October 26, 2005. (See Ex. A ¶ 5.)

10. To date, other than the Answer which the Court did not allow, OHCA has neither served nor filed a response to ASD's Complaint. (See Ex. A ¶ 6.)

11. Rule 55(a) provides that the court clerk shall enter default against a party who has failed to plead or otherwise defend as provided by the Rules. Since OHCA has neither served nor filed a response to the Complaint or otherwise defended this action in accordance with Rule 12, entry of default against OHCA is appropriate under Rule 55(a).

12. OHCA is neither an infant nor an incompetent. (See Ex. A ¶ 8.)

WHEREFORE, Plaintiff respectfully requests that the Clerk of Court enter default against Defendant OHCA, and is attaching a proposed Order granting this request as Exhibit C.

Respectfully submitted,

/s/ Heath A. Fite
James J. Robinson (ROB013)
Heath A. Fite (FIT011)
Attorneys for Plaintiff

OF COUNSEL:

BURR & FORMAN, LLP
3100 SouthTrust Tower
420 North 20th Street
SouthTrust Tower, Suite 3100
Birmingham, Alabama 35203

CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of October, 2005, I electronically filed the foregoing with the Clerk of the Court using the ECF system which sent notification of such filing to all properly registered parties. I hereby certify that on the 28th day of October, 2005, I served the following by directing the same to their office addresses through first-class, United States mail, postage prepaid:

Raquel Gayle,
Registered Agent for OHCA
Powell Goldstein
1201 West Peachtree Street
14th Floor
Atlanta, GA 30309

Lloyd G. Geddes, Jr. MD
Oncology Hematology Centers of Atlanta, P.C.
465 Winn Way, Suite 231
Decatur, Georgia 30030

/s/ Heath A. Fite
Of Counsel